United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

76-7436

B

P/S

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

NO. 76-7436

JOELLE FISHMAN, et als

vs

GLORIA SCHAFFER, et al

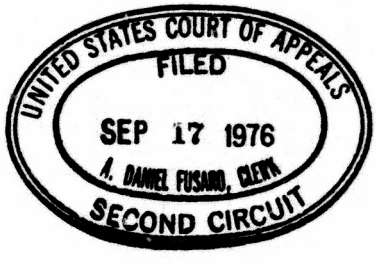
APPELLANTS' BRIEF

SUBMITTED BY

FRANK COCHRAN
CONNECTICUT CIVIL LIBERTIES
UNION FOUNDATION

57 Pratt St.
Hartford, Ct. 06103

September 16, 1976



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QUESTIONS PRESENTED

1. Did the District Court err in finding appellants barred by "laches" from the injunctive and declaratory relief to which they were otherwise entitled?

2. If the District Court did err, what is the appropriate relief at the present time?

STATEMENT OF THE CASE

Connecticut election law requires, for a successful petition campaign for a place on the ballot in November, that each petition be filed and verified before the Town Clerk for the town in which the signers reside, by the person (circulator) who witnessed the signatures.(C.G.S. Sec. 9-453i and 453k, Op at 3). There are 169 towns in Connecticut. (Op at 9). The petitions were to be filed by August 30, 1976 and the Town Clerks are given three weeks within which to verify signatures and send the verified signatures on to the Secretary of the State.(C.G.S. Sec.9-453n). For a Presidential candidate to obtain ballot status, 14,093 such signatures must be validated according to this procedure.(Defs Aug. 2 Aff, para 3).

Appellants are two petition circulators (Fishman and Gagyi) and the Presidential and Vice Presidential candidates of the Communist Party (Hall and Tyner), for whose candidacy Fishman and Gagyi circulated petitions. (Op at 9-10). Hall and Tyner were nominated by the Communist Party as its candidates February 18, 1976. (Pls Aug. 24 Aff, para). At almost the same time, Connecticut electors pledged to Hall and Tyner were named and plaintiffs Fishman and Gagyi, along with approximately thirty three other persons began to circulate petitions on their behalf. (Defs Aug. 2 Aff, para 2,3, Exhibits, Op at 10).

Appellants were aware of the complicated filing requirements of the Connecticut statute but hoped that by starting early they would be able to collect enough signatures to be reasonably sure of having 14,093 valid signatures without filing those of their petitions containing signatures of voters from small outlying towns. (Pls Aug.24 Aff, pars. 5,7).

However, in June 1976 plaintiff Fishman, who is also the executive secretary of the Communist Party in Connecticut, realized that this might well not be the case, and began searching for counsel to challenge the procedures as constitutionally overburdensome. (Ibid. paras 6,7).

On July 2, 1976 the complaint in this action was filed, claiming declaratory and injunctive relief against the burdensome portion of the Connecticut petition procedures, and "such other relief as law and equity may provide." A three judge court was convened as requested and on August 4, 1976 the case was heard.

Defendant Gloria Schaffer had filed an answer before hearing setting up general and jurisdictional defenses. All parties moved for summary judgment, attaching affidavits. Defendant Schaffer did not plead a defense of "laches" nor did she offer evidence of conceivable relevance to such a defense at the August 4 hearing.

There is no suggestion in the record that appellants Hall and Tyner are frivolous or fraudulent candidates and the number of signatures already verified and certified, about 10,000 according to the assistant attorney general (representation in open court September 14, 1976) - shows that they enjoy at least a "modicum of support." Their interest and that of the voters of Connecticut in having them on the ballot, are thus very substantial and identical.

On August 19, 1976 the District Court ruled, finding that the statutory petition verification process was unreasonably and unnecessarily burdensome but denying relief on the stated ground that "No explanation was offered to indicate why (the plaintiffs) did not bring this case

earlier, during a time when the state legislature, the body which ultimately must choose which constitutional method should be employed, was in session." (Op at 14). Judgment was entered dismissing the action on August 23. On August 26, 1976 plaintiffs filed a Rule 59 motion specifying the considerations which had led to the timing of the lawsuit. On August 27, the Court denied the motion without opinion.

Notice of this appeal was filed September 3, 1976 and the same day motions to expedite and for injunction pending appeal were filed. The Clerk's office scheduled both motions for hearing September 14.

No cross appeal has been filed. However, attorneys for another Presidential candidate, Eugene McCarthy, have requested intervention as parties or as amicus curiae on appeal. Appellants understand that Mr. McCarthy's supporters encountered problems similar to theirs in filing petitions.

As of the filing deadline, and by terminating their signature collection procedures a week early, appellants managed to file all but about 1550 of their almost 25,000 signatures.(Appellants' Verified Rule 8(a) Motion, paras 5-7). As of this writing a number of signatures have been allowed and a number disallowed. The 1550 unfiled signatures may well spell the difference between success and failure of Hall and Tyner's efforts to secure a ballot position. (Ibid. para 7).

On September 14,1976, a panel of this Court granted appellants' motion to suspend the rules and expedite the appeal, setting a briefing schedule.

ARGUMENT

I. THE DISTRICT COURT ERRED IN DENYING RELIEF ON THE GROUND OF LACHES.

Appellants have already argued extensively that the denial of relief based on a finding that they were guilty of laches was error. Copies of Appellants' Brief in Support of Injunctive Relief Pending Appeal and Appellants' Reply Brief Concerning Their Application for Injunctive Relief Pending Appeal are attached hereto and incorporated by reference. To summarize those briefs, the Supreme Court reversed a very similar use of the doctrine to deny relief in Williams v Rhodes 393 US 23 (1968). Insofar as Williams might be distinguished on the facts, in this case the necessity for relief follows a fortiori since plaintiffs filed their complaint earlier and have pursued it more diligently. Appellants were not guilty of any lack of diligence in pursuing their claim, and the defendants were not prejudiced by the timing of the lawsuit, in presenting any defense. Plaintiffs probably lacked standing to sue before late February, 1976 and the facts on which both they and the Court relied as showing that the burden imposed by the signature certification process was unreasonable were not, and could not have been, known until after the suit was in fact filed. A federal court has no power to deny all relief where it finds a violation of the civil rights act. And defendant in this case failed to plead or introduce evidence pertaining to the claimed defense.

Here appellants only add that last-minute litigation and extraordi nary remedies are simply a necessary concomitant to litigation concerning election laws. See e.g. Williams v Rhodes 393 US 23 (October 23, 1968), Communist Party v Ogilvie 357 F Supp 105 (ND Ill., 1972)

(decided September 21, 1968, requiring that ballots be printed with Communist Party candidates included). Mitchell v Donovan 290 F Supp 642 (D Minn, 1968).(heard September 17, decided October 2, 1968, requiring the same). And see the decisions attached to the amicus brief filed on behalf of Mr. McCarthy. All of these courts faced the same time pressures and consequent inability to await legislative action which this case presents. To blame plaintiffs for the problems of time-constrained litigation is highly inaccurate and warps equitable doctrine all out of shape.

Laches does not apply unless the party asserting it proves both of its two elements: 1) that the other party was not diligent in pursuing remedies which were fully available to it and 2) that the party asserting the defense was harmed in its presentation of defenses on the merits by the delay; Southern Pacific Railway Co. v Bogert 250 US 483, 488-90. If the appellants were diligent no amount of prejudice could bar relief under the doctrine. See also Mulholland v Pittsburg National Bank 174 A2nd 861 (Supreme Court of Pennsylvania, 1960), 30 CJS Equity Sec. 121.

Here defendants produced, and the record contains, no evidence that either condition pertained. Even if both of them pertained, appellants have made such a substantive showing of support that applying the doctrine of laches to exclude them from the ballot would be contrary to the public interest, Williams v Rhodes 393 US 23 (1968). Medical Laboratory Tech. Inc v Approving Authority for Schoools for Training Medical Lab Technologists 213 NE 2nd 225 (Mass 1965). See also Long Island R Co v New York Central 182 F Supp 100 ( ) and Brewer v Simpson 2 Cal Reptr

609, 349 P 2nd 289 (Cal. App 19).

This court must follow Williams and reverse the denial of relief based on laches.

II. APPROPRIATE RELIEF

At the present time the case stands in a somewhat different posture as to the appropriate relief, than it did when the District Court ruled August 19. Time is sufficiently short that as a practical matter this court will have to direct relief rather than remanding with general instructions.[1] Appellants submit that the most appropriate relief at this time is an order requiring that the names of plaintiffs Hall and Tyner be placed on the ballot, and that other less drastic forms of relief are no longer the most appropriate way of effectuating the interests of the parties and the public.

The complaint in this action claimed declaratory and injunctive relief against enforcement of those portions of the Connecticut petition procedure claimed (and found) to be unconstitutionally burdensome. It also claimed "such other relief as law and equity may provide." At the time the District Court ruled, August 19, 1976, narrow relief would have have been appropriate, since there were still eleven days before the

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[1] It may not be superfluous to note again that the state's interest is significantly advanced by the grant of relief early rather than late. The state's argument to the contrary September 14 proceeded purely on the assumption that no relief would be forthcoming at all.

petitions were due to be filed under the statutory procedures. The Court could have directed the defendant Schaffer to accept and notarize petitions submitted in person to her office on or before August 30, 1976, then forwarding them with instructions to the appropriate town clerks. Or the court could have declared the present system unconstitutional and left to the defendant and attorney general and whatever processes - executive or legislative - they thought appropriate, the creation of a constitutional system.[2] But the court chose to do neither of these, instead dismissing "on the merits."

The present time pressure in developing and implementing a remedy thus stems,not from the timing of the lawsuit, but from the District Court's clear error in dismissing on the grounds of laches. There are at this time, at least three remedies which this Court might direct: 1) a declaratory judgment that the Connecticut signature verification procedures for petitioning parties or independents in statewide elections are unconstitutionally burdensome, 2) issuance of an injunction against the

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[2]Although the record in this case does not reveal it counsel for appellants requested that the attorney general consider the court's opinion as if it were a declaratory judgment and issue an opinion consonant with the District Court's constitutional construction. This the attorney general declined to do.

Had the court issued a declaratory judgment the plaintiffs would, of course, have been in a position to apply later for injunctive relief if the defendants refused to act in conformity, Title 28 USC Sec. 2202 . Although more cumbersome and time consuming than a mandatory injunction, such a process would have been less time consuming than the present appeal.

enforcement of these provisions, together with an order requiring that the Secretary of the State accept, notarize and dispatch to town clerks for checking against current voter registry lists within a reasonable period of time, or 3) issuance of an injunction requiring that Hall and Tyner be placed on the ballot. Appellants respectfully submit that the practical difficulties which would surround 1) and 2) above have grown so substantially since August 19 that 3) has become the remedy best suited to protecting all the interests involved, and that the Court has the power to order it.

1. A declaratory judgment at the present time could leave to the appellee Secretary of the State and the attorney general the option of immediately certifying plaintiffs onto the ballot or devising a new system and timetable for submitting and checking those 1500 unfiled petition signatures. But that would not guarantee appellants either a ballot position or a constitutional signature verification system both of which they most emphatically deserve. To require appellants to proceed to enforce a declaratory judgment through a new application for injunction, in the District Court, is simply to require a further delay in resolving this matter. And the parties emphatically agree that the public interest, however conceived, requires a speedy resolution to this case.

2. Serious practical problems would result from an injunction preventing enforcement of the challenged provisions and extending the time within which to file the additional petitions with the Secretary of the State's office to be notarized there. The appellee detailed the

difficulties she would have in complying with deadlines if required to do so on September 14. While in no way suggesting that those considerations are or could ever take precedence over appellants' rights, it is apparent that they are growing concerns. The process which would consist of filing the petitions with the Secretary of the State, the Secretary notarizing them and sending them to town clerks, the town clerks checking the signaturesand sending them back, and the Secretary of the State counting them, would undoubtedly take several days at the very least. Nor would it constitute a complete remedy to the appellants since the latter almost completely ceased efforts to collect signatures about a week before the August 30 deadline in order to file as many of those previously collected as possible. In sum the injunction originally requested by appellants in the District Court has become a far less satisfactory remedy than it was when the District Court ruled.

3. That leaves the remedy of a mandatory injunction placing Hall and Tyner on the ballot. Although appellants did not request this of the District Court, it is cognizable under their general claim for relief. All parties could comply without further confusion. By leaving the issue to the voters, the state's concern to prevent a cloud on the election will be fully solved. Any printing delays will be minimal.

This form of relief has been ordered in election cases by many courts both federal and state in election cases. See e. g. Williams v Rhodes 393 US 23 (1968), Mitchell v Donovan 290 F Supp 643 (D Minn, 1968) (3 Judge

Ct including, incidentally Judge (now Justice) Blackmun), Communist Party v Ogilvie 357 F Supp (ND Ill, 1972) McCarthy v Guzzi (Suffolk County (Mass) Superior Court Nos 15860,15861 September 1, 1976) (attached to amicus McCarthy's brief) (which involved state law provisions similar to the Connecticut ones at issue) McCarthy et al v Slater (Supreme Court of Oklahoma, July 23, 1976) (attached to amicus brief), Mc Carthy v Askew (SD Fla, No. 76-1460-CIV-NCR) (Roettger, J) (September 10, 1976 slip op not yet available).

Nothing in the Supreme Court's recent election decisions prevents such relief. In Storer v Brown 415 US 724, 731-3 (1974) Justice White, writing for the Court reiterated holdings of Bullock v Carter 405 US 134 (1972) and Jenness v Fortson 403 US 431 (1971), that the interests a state might legitimately pursue through a petition procedure for ballot access were

> ...to prevent the clogging of...election machinery,avoid voter confusion, and assure that the winner is the choice of ... at least a strong plurality...(and) to protect the integrity of (the state or nation's) political processes from frivolous or fraudulent candidacies (quoting from Bullock at 145).

None of the state's legitimate interests would be impaired by an order placing Hall and Tyner's names on the ballot. See Mitchell v Donovan (supra). The Supreme Court itself chose this remedy under conditions almost precisely similar to those present here, Williams v Rhodes 393 US 23. While such relief should no doubt be used sparingly, and was not yet necessary when this case was in the District Court, under present circumstances it is the only effective relief.

CONCLUSION

For the reasons stated herein and in the attached preliminary briefs, the District Court must be reversed. An immediate order should issue directing the defendants to print appellants Hall and Tyner's names on the ballot.

RESPECTFULLY SUBMITTED

BY _____

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Appendix A

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

NO.

JOELLE FISHMAN, et als

vs

GLORIA SCHAFFER, et al

APPELLANTS' BRIEF IN SUPPORT OF
INJUNCTIVE RELIEF PENDING APPEAL

SUBMITTED BY

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STATEMENT

In their complaint filed July 2, 1976, plaintiffs-appellants Joelle Fishman, Peter Gagyi, Gus Hall and Jarvis Tyner sought, inter alia, declaratory and injunctive relief against enforcement of several closely related provisions of the Connecticut election laws regarding petitions to appear on the ballot. Fishman and Gagyi were petition circulators for Hall and Tyner, the candidates of the Communist Party of the United States for President and Vice President of the United States.

Appellants challenged as unduly and unnecessarily burdensome the requirement that each petition circulator appear in person before the town clerk for each town one or more of whose electors had signed a petition for the purpose of verifying such signatures, and that petitions be filed separately with each town clerk.

Appellants did not challenge the number of electors' signatures required or the requirement that each circulator sign a statement verifying the signatures which she or he had witnessed.

Specifically, appellants requested the Court to declare unconstitutional and enjoin enforcement of the underlined portions of the following statutes:

1. "Each page of a nominating petition shall be submitted <u>by the person who circulated the same to the town clerk of the town in which the signers reside</u>. . . ." Sec.9-453i (1976 Supp.).

2. "The town clerk shall not accept any page of a nominating petition <u>unless the circulator thereof signs in his presence the statement</u> as to the authenticity of the signatures thereon required by section 9-9453j." Sec. 9-453k(a) (1976 Supp.).

3. "The town clerk shall certify on each such page that the circulator thereof signed such statement in his presence and that either he knows the circulator or that the circulator satisfactorily identified himself to the town clerk," Sec. 9-453k(b) (1976 Supp.).

A three-judge Court was convened and heard the case August 4, 1976. At argument the defendants, the Connecticut Secretary of State and a representative town clerk, conceded that the state's interest in verifying signatures could be met in substantially less burdensome ways (Op at p. 11). The Court later found facts which compelled the conclusion that Fishman, Gagyi and other petition circulators for Hall and Tyner had obtained a substantial number of signatures which they would not, as a practical matter, be able to file under the statutory procedure because of the impossibility of traveling to each of the town clerks' offices in question. (Op at 9-10).

In fact Fishman had over 60 signatures from 38 towns which she was unable to file prior to the August 30 filing deadline. Gagyi had 27 signatures from 23 towns. (Verified App. for Inj. pending appeal, par. 5). These petitions were verified before a Commissioner of the Superior Court and turned over to defendant Schaffer's office on August 30, 1976. (App., para. 5). In addition, Fishman has in her possession approximately 1485 signatures or otherwise valid petitions for Hall and Tyner which were not filed on August 30, 1976 because of the practical impossibility of the circulators' reaching all of the town clerks.

On August 19, 1976 the Court ruled that the plaintiffs, although otherwise entitled to relief, were barred from the relief sought by the doctrine of laches. The Court stated that appellants had not explained

their failure to file the instant lawsuit at a time when the state legislature would be in session to enact a new filing system. (Op at 14). Plaintiffs then moved for a new trial attaching an affidavit, providing their explanation for their tactics. (Exhibit E). The Court denied the motion without opinion. (Exhibit F).

Plaintiffs have appealed and moved 1) for an injunction pending appeal based on the clear error committed by the District Court in its "laches" notion and, 2) for an expedited hearing on the appeal on its merits.

I. THE COURT OF APPEALS HAS JURISDICTION OVER THIS APPEAL FROM THE DECISION OF A THREE-JUDGE DISTRICT COURT.

There is no question that the Judgment of the District Court entered August 23, 1976 dismissing this action on the merits is a final order. Compare Ortiz v Hernandez Colon 511 F2nd 1080 (1st Cir, 1975). Appeal to this Court is therefore proper unless plaintiffs have a direct appeal to the Supreme Court of the United States; Title 28 U.S.C. Sections 1291. Title 28 U.S.C. Section 1253 governs direct appeal to the Supreme Court from decisions of three-judge District Courts, providing for direct appeal where an injunction has been granted or denied based on a finding that a statute is or is not constitutional.

The Supreme Court lacks jurisdiction over this appeal because: 1) the District Court denied relief on a ground which was not a decision on the merits, and 2) the District Court denied declaratory relief. In Gonzalez v Automatic Employees Credit Union 419 US 90 (1974) the Supreme Court held that the proper appeal from the decision of a three-judge District Court dismissing a complaint for lack of standing was to the Court of Appeals. Here the District Court's decision that plaintiffs were guilty of laches is a grounds similarly removed from the merits of the case, and thus also outside the intended scope of the somewhat murky Section 1253.

As a result Section 1291 governs and this Court has jurisdiction. The remainder of this brief argues that the Court should exercise that jurisdiction to 1) grant injunctive relief under Rule 8(a)Federal Rules of

Appellate Procedure, pending appeal, and/or 2) suspend the rules and advance the appeal for argument. The exhibits to the application are equally germane to both requests.

II. INJUNCTIVE RELIEF PENDING APPEAL IS PROPER AND NECESSARY IN THIS CASE

Rule 8(a) of the Federal Rules of Appellate Procedure specifically empowers a Court of Appeals to issue injunctive relief pending appeal. Such relief is proper in this case without prior resort to the District Court because that court denied such relief in dismissing on the merits, and in accordance with the normal considerations governing preliminary injunctive relief. See Re McKenzie 180 US 536, Checker Motors v Chrysler Corp. 405 F2nd 319 (2nd Cir, 1969). See also National Association of Letter Carriers v Sombrotto 449 F2nd 915 (2nd Cir 1971). The present application relies on facts found by the District Court and found in affidavits exhibited with the application. See 32 AmJur 2nd Federal Practice and Procedure Sec. 408.51 (pocket part). Specifically, plaintiffs appellants request that this Court restrain the application of the challenged statutes to deny plaintiffs Hall and Tyner a place on the Connecticut presidential ballot until this Court has an opportunity to review the District Court's decision barring injunctive relief based on its finding that the plaintiffs were guilty of laches and that it advance argument on the appeal.

There is no question that Hall and Tyner stand to suffer irreparable harm - being barred from the ballot - in the absence of relief. See e.g. Williams v Rhodes 393 US 23, 21 LEd 2nd 24. It is not at this

time certain that such injury will occur absent relief. But there is at least a substantial likelihood that it will and relief may well be too late if delayed until the chances of such injury are known with greater certainty. Nor is there any question but that appellants lack an adequate remedy at law. See e.g. Williams, supra. Rather the questions are 1) whether the plaintiffs are likely to prevail on the merits and 2) whether the balance of harms tips decidedly in their favor. See, generally, Checker, supra., and Letter Carriers, supra.

A. PLAINTIFFS WERE NOT GUILTY OF LACHES.

The District Court opined that Connecticut's statutory requirement that each nominating petition be filed by the circulator appearing in person before the Town Clerk of each town whose voters signed a petition, was unconstitutionally burdensome because it prevented, as a practical matter, the filing of many petitions. The Court declined to order any relief whatsoever, though plaintiffs had requested both declaratory and injunctive relief as well as any other proper relief. The Court then dismissed the action with costs. It did so on the peculiar and unique ground that the plaintiffs were guilty of laches because they had not brought their complaint at a time when, if the court ordered relief, the legislature would be in session and could respond with some new statutory system. The decision thus invented roadblocks to judicial relief hitherto unknown, even in the thorny complexities of modern procedural issue-ducking. The finding of laches was clear error and warrants summary reversal.

Laches is an equitable defense available to a party prejudiced by the unreasonable delay of an opposing party in asserting and/or suing to vindicate rights after those rights have been established. As Justice Brandeis put it:

> ...the essence of laches is not merely lapse of time. It is essential that there be also acquiescence in the alleged wrong or lack of diligence in seeking a remedy... Nor does failur , long continued, to discover the appropriate remedy, though well known, establish laches where there has been due diligence and, as the loer courts have here found, the defendant was not prejudiced by the delay.

Southern Pacific Railway Co. v Bogert 250 US 483, 488-490. The District Court here did not discuss the elements of laches but relied on two notions: 1) that "no explanation was offered to indicate why they did not bring this case earlier, during the time when the state legislature... was in session." (Op at 14) and 2) that "striking down the p ent method at this time...would leave the State with no protection at all." Plaintiffs submit that they could not have brought the case earlier, that the state legislature schedule is of no relevance to a defense of laches, that the state's interests were quite adequately protected by the system which would have remained had the court enjoined the burdensome parts, and that other emergency methods exist for protection of those interest through promulgation of an emergency regulation. In addition both considerations listed by the Court have no bearing on their prayer for declaratory relief.

The District Court suggested that the plaintiffs should have brought suit at some time after the 1974 election. The Court overlooked the fact that plaintiffs could not have filed this action until at least February 20, 1976. Candidates Hall and Tyner were not nominated until February 18,

(Exhibit E, p.1) Plaintiff Fishman did not begin to organize the Party's effort to secure a ballot position until after their nomination and she could not have circulated the petitions until after that time. It could not have been known who the petition circulators would be until the petition campaign was initiated. It was not necessary under any other statute to begin at an earlier date, and any statute requiring that the petition campaign occur even as early as February might well be unconstitutional. See Salera v Tucker 399 F Supp 1258 (ED Pa, 1975) aff'd ____ US ___ 96 SCt 1451.

It is therefore dubious that a "case or controversy" was presented prior to plaintiffs' taking out petitions February 20, 1976. O'Shea v Littleton 414 US 488 (1974) U.S. v SCRAP 412 US 687 Socialist Labor Party v Gilligan 406 US 583. Certainly standing is a sufficiently complex and uncertain area to justify a litigant's waiting until he is reasonably certain to have standing. See e.g. Worth v Seldin 422 US 490 (1975) aff'd. 495 F2nd 1187 (2nd Cir 1974) Evans v Hills ___F2nd___ (2nd Cir, June 4, 1976). It follows that plaintiffs cannot be guilty of laches unless they delay unreasonably and prejudicially after facts relevant to the controversy are known.

The controversy was not ripe for judicial intervention until the time this action was brought. Although plaintiffs took out and began to collect signatures on petitions in February, it was only later that it appeared likely that the burdensome filing requirements might make the difference between failure and sucess. (Exhibit E, para. 5, 6). Even

as this is written there is no way of being certain that this is so. It is certain that facts upon which the District Court relied in its opinion could not have been known had the action been filed earlier.

And even if the action had been filed the day after the plaintiffs took out petitions, it would not in all probability have been heard and determined in time for the state legislature to act, the course the court proposed to the plaintiffs. This Court may take judicial notice that Connecticut's legislature adjourned May 5, 1976.(West Pub Co, 1976 Connecticut Legislative Service, Vol 5).

Despite as diligent a search as has been possible to conduct under the time pressures in this case, counsel has not found a scintilla of law supporting the District Court's relation of the state legislature's schedule with the plaintiffs' alleged laches. "Due diligence" does not require litigants to go to the legislature. The legislature would not have been under any obligation to consider proposals made by the plaintiffs and there was no question of abstention because the state statute was perfectly clear in its requirements. Nor, as the facts alleged in the verified motion for new trial and application for injunction pending appeal make clear, did the timing of the lawsuit constitute an acquiescence in the statutory scheme.

The District Court's opinion rests principally upon its unexamined premise that to declare the present statutory filing scheme unconstitutional was somehow to leave the state unprotected. Nothing could be further from the truth. All parties conceded that if circulators attested to the signatures in person before and delivered those petitions they were unable to file under the statute to, the defendant Secretary of State, on

or before the filing date, the state's interests would have been completely protected. The Court, however, cited the absence of a statutory mandate for this concededly efficient scheme. But the Court itself could have ordered it, or the Attorney General could have issued an opinion in accordance with the Court's opinion, or the defendant Secretary of State could have issued emergency regulations. Even without any action on the part of any of these parties, the State is not unprotected. Each circulator would still have to sign the same statement, under oath and deliver the petitions to the town clerks for a check of the accuracy of the names. Even if the state's interests were prejudiced in some way by deletions from the statutory scheme, such prejudice is not caused by the plaintiffs' delay but by the court's relief. Viewed thus, the court's duty to impose if necessary an emergency system protecting those interests becomes clear.

For these reasons the appellants are very likely to prevail on the merits of the appeal and injunctive relief pending appeal is appropriate.

B. THE BALANCE OF HARMS TIPS DECIDEDLY IN APPELLANTS' FAVOR

Exclusion from the ballot is unquestionably irreparable harm to a candidate; that is the premise underlying all challenges to state election laws. See e.g. Williams v Rhodes 393 US 23. American Party of Texas v White 415 US 767 Storer v Brown 415 US 724. Exclusion precludes any but the most miniscule chance of success in a general election as well as depriving the candidate's supporters of ready methods of showing their support and even non-supporters from registering their disapproval of

other candidates and policies. Voting issues have occupied a special and important area of equal protection law at least since Baker v Carr 369 US 186. See e.g. Dunn v Blumstein 405 US 330. There can be no doubt that the harm to appellants of exclusion by an unconstitutional burden to ballot access is great.

The harm to the state by contrast is hard to see. The challenged provisions are a part of the state's scheme for ensuring that petitioning parties demonstrate a modicum of support before being put on the ballot. But they are only a tiny corner of that scheme, and could concededly be replaced by a better method of insuring the same ends. The District Court stated that to strike burdensome portions was to leave the state without protection for its need to assure that the signatures were not fraudulently procured and that the petitions were not altered after attestation by the circulators. The first of these goals would be served by the system remaining after striking the burdensome clauses. The second could be met either by a sworn certificate enclosed in a mailing by the person having custody of the petitions after alteration or by having the Secretary of State's office do the attestation and itself retain custody until the petitions are mailed to Town Clerks for signature verification.

In sum the present system minus the burdensome provisions does not create any substantial harm and even the minor risks it does create can easily be remedied without legislation. Thus the balance of harms tips to the plaintiffs quite decidedly.

For these reasons the Court should grant appellants' application for injunction pending appeal and should suspend the rules and advance the case

for argument.

RESPECTFULLY SUBMITTED

By

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This is to certify that on the 2nd day of September, 1976 copies of the foregoing were mailed postage prepaid to David Losee, Esq., 4 No. Main St., W. Hartford and were delivered to Daniel Schaefer, Esq., Assistant Attorney General, 30 Trinity St., Hartford, Ct.

Appendix B

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

NO. 76-7436

JOELLE FISHMAN, et als

vs

GLORIA SCHAFFER, et al

APPELLANTS' REPLY BRIEF CONCERNING THEIR APPLICATION FOR INJUNCTIVE RELIEF PENDING APPEAL

SUBMITTED BY

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Appellants submitted a brief with their verified motion for injunctive relief pending appeal, September 3, 1976. Appellees have responded with affidavits and a brief, and appellants respectfully submit this brief replying to appellees submissions and supplementing their earlier brief.

FACTS

Both parties have submitted affidavits containing facts of conceivable relevance to the issues raised by the pending motions, since the District Court hearing August 4, 1976. These submissions do not contradict each other but provide an updated and supplemented factual background for decision on the pending motions and the appeal as a whole. The following statement supplements the appellants' statement in their September 3 brief.

August 30, 1976 was the last date for the submission of petition pages to Town Clerks under the procedures (Defs Sept. 9 Affidavit, para. 2), but the Town Clerks have three weeks within which to verify signatures (Ibid, para. 3). This means that the Secretary of State's office cannot have a complete count of the verified signatures before September 20, 1976, although it is possible that sufficient signatures to assure a ballot place will be certified by the Town Clerks earlier. Thus, notwithstanding the provisions of the Overseas Citizens Voting Rights Act of 1975, considerations of other state statutes, and the printer's schedule (Def Sept. 9 Aff. paras. 5-7), the ballots will not be printed according to schedule.

The plaintiffs were aware of the statutory requirements challenged in this action well before filing this lawsuit. (Defs 9/9 Aff. paras. 10-13). On February 18, 1976 the Communist Party nominated Gus Hall and Jarvis

Tyner as its Presidential and Vice Presidential candidates (Pls Affidavit August 24, para. 3) and on February 20 took out petitions (Pls. 8/24 Aff. para. 4). Plaintiffs had hoped that by starting early to gather signatures they would be able to collect sufficient signatures to ensure a place on the ballot even without filing petitions in some outlying towns (Pls 8/24 Aff., para. 5), but by early June they realized that they would need to file all of their petitions to be reasonably sure of gaining a place on the ballot (Pls. 8/24 Aff. para. 6). Over 1550 signatures were not filed with the appropriate Town Clerks before the August 30 deadline, due to the unreasonable and unnecessary filing requirements at issue in this case (Pl's Verified App. Inj. pending appeal, paras. 5, 6, updating 8/14 Aff. para. 8). At this writing none of the parties knows whether these unfiled petitions would mean the success or failure of the petition campaign.[1] The Head election attorney believes that relief at this time would cause some confusion (Def. 9/9 Aff. para. 15) though he expresses no opinion as to whether 1) that confusion would be in excess of that already created by the tight and possibly conflicting printing schedules required by federal and state statutes absent relief in this case, or 2) whether that confusion would be less if ordered after a full hearing on the appeal; compare Williams v. Rhodes 21 LEd2d 69 (1968) confirmed 393 US 23, 21 LEd2d 24 (1968).

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[1]The Assistant Attorneys General opine at p. 7 of their brief that "failure of the Communist Party to qualify" was/is probably not the result of the signature verification procedures. This statement is belied both factually and logically by the record. The plaintiffs Hall and Tyner have neither been qualified nor disqualified to date and an inference that they have failed is highly improper from the attorneys for a supposedly impartial public official. And the 1550 or so unfiled petition signatures appear quite likely to constitute the difference between success and failure.

LAW

Appellees have objected to injunctive relief pending appeal essentially on three bases, 1) that appellants did not request such relief from the District Court, 2) that the balance of harms tips in their favor and 3) that appellants are not sufficiently likely to succeed on the merits to warrant preliminary relief.

The first does not require serious consideration. Appellants did not request an injunction pending appeal from the District Court because the three judge panel denied precisely that relief and all other relief and dismissed the case on August 19, 1976. The present application clearly shows that such an attempt would be an idle and futile act at a time when all parties agree that time is of the essence. Without serious question this case falls within the exception in Rule 8(a) Federal Rules of Appellate Procedure:

> Motions for [injunctive relief pending appeal] . . . shall show . . . that the district court has . . . failed to afford the relief which the appellant requested with the reasons given by the district court for its action.

Here the relevant parts of the record including the entire District Court opinion were attached to the application and incorporated by reference.

The appellees' remaining contentions will be considered in order.

I. THE BALANCE OF HARMS TIPS DECISIVELY IN APPELLANTS' FAVOR

A common theme in both the District Court opinion and the appellees' brief, is that they ignore the harm to the plaintiffs absent relief. The Court never mentions the plaintiffs' interest in being on the ballot, or as

being considered in deciding whether to grant or withhold relief.[2] And the appellees go on for several pages about the need to prevent fraud and the supposed difficulties in a late change of procedure, but never mention the plaintiffs' interest--either as a part of the "public interest" they purport to protect, or as a counterbalance to their narrow administration concerns.

It is hard to ascribe this omission to anything other than a virulent form of prejudice against the plaintiffs. One simply cannot imagine a Court or even a party ignoring such interests if the litigants were Jimmy Carter and Walter Mondale or George Wallace.

Suffice it to say the Court and appellees are wrong and that error undermines their argument at every step. Williams v. Rhodes 393 US 23 (1968). It is significantly in the public's interest, as well as appellants, that those candidates who do have a modicum of support be placed on the ballot. Public confidence in the electoral process must be more seriously shaken by the exclusion of a candidate by means of unnecessarily burdensome machinery than by the inclusion of any candidate.

Appellants' September 3 brief discusses the District Court's conclusion

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[2]The District Court cited U.S. ex rel Greathouse v. Dern 289 US 352 (1933) for its nostrums concerning the public interest. That case involved an attempted mandamus to require the Secretary of War to permit the plaintiff to build a wharf into the Potomac river. Since all parties knew that the government was going to condemn the upland in question, the plaintiffs' sole purpose was unmasked; he wanted merely to increase his take in the condemnation. The Supreme Court upheld the denial of mandamus:

> . . . the extraordinary remedy by mandamus . . . would be burdensome to the government without any substantially equivalent benefit or advantages to the petitioner. 289 US at 360

It would be hard to imagine the Court citing such a case were the litigant Jimmy Carter.

that to strike down the defending parts of the statute would leave to state unprotected. Even if there were a possibility that some candidates would get on the ballot through some loophole in the signature verification process, it would not be a very significant harm to the public. In any election case, the voters have the last word.

The only other harm suggested to the state of granting relief is the increased burden on the Secretary of State's office of taking charge of the verification process. The District Court found that to be of little significance (Op at 13-14). Indeed the Court pointedly assumed that the legislature would act in the future to impose precisely that burden on the defendant (Op at 15). Even focussing purely on the immediate situation, the burden is not very serious, though it is, as appellees state getting more so as time decreases. Hence the necessity for an expedited appeal and injunctive relief immediately.

II. THE PLAINTIFFS ARE ALMOST CERTAIN TO SUCCEED ON THE MERITS

In a case with such time pressures as are presented here, the probability of success on the merits becomes the overriding concern. If injunctive relief is to be granted, it is far better for all parties that it be granted sooner rather than later, Williams v. Rhodes, 21 LEd2d 69 (Stewart, J., in chambers).

The District Court ruled that plaintiffs would be entitled to injunctive relief but were barred by the equitable defense of laches.[3] (Op at 13-14).

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[3]The District Court also invoked the principle of "respect for the independence of state action" citing Burford v. Sun Oil Corp. 319 US 315 (1943). This use of considerations of federalism was disapproved by the

Plaintiffs have already argued that this application of the laches doctrine was clear error but wish to add this short supplement to that brief.

1. Laches is an affirmative defense and must be pleaded and proven by the party asserting it Baker v. Nason 236 F2d 483 (5th Cir., 1956) Pascale v. Zoning Board of Appeals of New Haven 186 A2d 377 (Conn. Supreme Court, 1962). Here the defendant did not raise the defense by answer and produced no facts to support it.

2. To be guilty of laches, plaintiffs would have had to have failed to exercise due diligence after their right of action had fully accrued. Costello v. United States 365 US 265 (1961); U.S. v. Northern Pacific Railway Corp. 169 F. Supp. 735 (D. Wyo. 1959), Lubin v. Lubin 302 P2d 49 (Cal. App. 1956), Mulholland v. Pittsburgh National Bank 174 A2d 861; 30 CJS Equity §121. Here plaintiffs probably lacked standing to sue until February 20, 1976 when they took out petitions, and the facts which proved that the burdens placed by the challenged statutes were unreasonable did not emerge until later; indeed they are not fully known today.

3. To be guilty of laches, plaintiffs must have had actual knowledge of the facts on which their claims rested and delayed unreasonably after such knowledge. Polaroid Corp. v. Polarad Electronics 287 F2d 492 (2d Cir., 1961) cert den'd 368 US 20. But see Chandon Champagne Corp. v. San Marino Wine

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Supreme Court in Williams and has not reappeared in election law cases since. It is hard to imagine an area of state action less subject to such prudential restraints than access to the ballot of a candidate for the office of President of the United States.

Corp. 353 F2d 531 (2d Cir., 1964) (special circumstances requiring exception to general rule). Again, the facts in this case are still emerging.

4. To be guilty of laches a party must not only have delayed unreasonably but the party asserting the defense must have relied on the inaction to its detriment. Akers v. State Marine Lines 344 F2d 217 (5th Cir. 1964), General Electric Co. v. Sciaky Bros. 187 F. Supp. 667 (E.D. Mich. 1960), James McWilliams Blue Line v. Esso Standard Oil Co. 145 F. Supp. 392 (SDNY, 1956) Mutual Life Ins Co. v. Simon 151 F. Supp. 408 (SDNY, 1957). Here the claimed prejudice or detriment would result solely from the court's refusal to order appropriate relief and not from the timing of the plaintiffs' lawsuit. Prejudice is not mere loss, "but that delay has subjected [the defendant] to a disadvantage in asserting and establishing his claimed . . . defense." Akers, supra at 220. Defendants have not claimed any difficulty in defending at any point in the proceedings.

5. There is authority for the proposition that in a civil rights act case the District Court lacks discretion to deny relief where it finds the plaintiff to have established a right at trial, and relief is necessary to implement that right; Sostre v. Rockefeller 312 F. Supp. 863, 884 (SDNY 1970) (Motley, J) rev'd in part, other grands 442 F2d 178, 404 US 1049, Henry v. Greenville Airport Commission 284 F2d 631 (4th Cir., 1960).

6. In deciding that plaintiffs were barred from otherwise appropriate relief by the "laches" doctrine, the District Court neglected to mention the leading case, Williams v. Rhodes 393 US 23 (1968), which is on all fours and will require reversal. Similarly Williams is the only relevant authority concerning the application for injunctive relief pending appeal.

In Williams, Independent presidential candidate George Wallace had contacted the Ohio Secretary of State in 1964 and several times i 1967 concerning his desire to gain ballot status. Wallace had been briefed on the requirements of Ohio election law early. He had formally requested a place on the ballot in April, 1968. But he had waited until July 29, 1968 to file suit. The District Court, presaging Judge Blumenfeld's opinion here, held that Wallace was barred by laches, ruling on August 29, 1968, from seeking equitable relief by his delay in filing suit; 290 F. Supp. 983 (SD Ohio, ED). The Supreme Court reversed. Initially, Justice Stewart granted an injunction pending appeal, in Chambers, 21 LEd2d 69 (September 10, 1968). The full court granted an early hearing and ordered Wallace put on the Ohio ballot October 15, 1968; Williams v. Rhodes 393 US 23. In rejecting Ohio's claim that deference to the legislative branch required the Courts to withhold relief, the majority squarely rejected the notion relied on below, that plaintiff uld be relegated to the legislative.

The Supreme Court also reversed the District Court's holding that plaintiffs were barred from equitable relief by laches, albeit sub silentio.

Here, reversal must follow a fortiori. Plaintiffs filed the instant lawsuit on July 2, 1976, compared with the Wallace Party's July 29, 1968 filing. They have diligently pursued every remedy open to them and offerred a complete explanation of their considerations in the timing of the case. And this Court is in a position to rule a full month earlier than was the Supreme Court in Williams.

Defendants rely on Sullivan v. Grasso 292 F. Supp. 411 (D Conn 1968) for the proposition that courts will deny relief where a challenge comes "at

the eleventh hour." That case was decided on October 28, 1968, eight days before the relevant election. By contrast the present case was decided August 19, 11 days before the statutory filing deadline for petitions. The Williams injunction was issued on September 10 and confirmed October 15. If the present application is granted forthwith, there will still be a period of six days before the statutory deadline for certification by the town clerks. The Sullivan case is inapposite.

If the Court is, as it may reasonably be, concerned to permit the defendant to proceed to print ballots and labels for voting machines, an alternate form of relief would be to require that the ballots be printed with the names of candidates Hall and Tyner on them. Voting machines can later be corrected if erroneous and absentee ballots marked for a subsequently disqualified candidate could be counted as write-ins. That would have the substantial advantage of simplifying the administrative burden and permitting the defendant Schaffer to meet all time deadlines. It should be noted that the relief in Williams was a court order placing George Wallace on the ballot without proof that any of the 450,000 signatures his organization had collected were valid. While the Supreme Court has later held that states have a substantial interest in petition and certification procedures, it has never disapproved the remedy it chose in Williams. See e.g. Storer v. Brown 415 US 724 (1974) Jenness v Fortson 403 US 431 (1971).

CONCLUSION

The application under Rule 8(a) for injunction pending appeal is in order and timely. The balance of harms tips significantly in appellants favor. Appellants are nearly certain to succeed on the merits. Injunction pending appeal should therefore issue.

RESPECTFULLY SUBMITTED

BY _____
FRANK COCHRAN

CONNECTICUT CIVIL LIBERTIES UNION
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Attorney for Appellants
Fishman, Gagyi, Hall and Tyner

This is to certify that on the 2nd day of September, 1976 copies of the foregoing were mailed postage prepaid to David Losee, Esq., 4 No. Main St., W. Hartford and were delivered to Daniel Schaefer, Esq., Assistant Attorney General; 30 Trinity St., Hartford, Ct.

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APPENDIX C

Connecticut General Statutes, Chapter 153, Sections 9-453a-453s

C

PETITIONING PARTIES

Sec. 9-453. Petition requirements. Section 9-453 is repealed.

(1949 Rev., S. 1044; 1953, S. 569d; 1957, P.A. 410, S. 1; 1958 Rev., S. 9-72; 1959, P.A. 476, S. 1; 675, S. 1; 1963, P.A. 17, S. 77; 1971, P.A. 806, S. 1.)

Former section cited. 10 CS 210; 16 CS 5.

Sec. 9-453a. Petition form. Each petition for nomination for elective office shall be on a form prescribed and provided by the secretary of the state. The secretary of the state shall give to any person requesting such form the number of pages requested by such person or the number which the secretary deems sufficient, provided the secretary of the state shall give to any person requesting such form, pages sufficient to accommodate at least three times the number of signatures required on the particular nominating petition.

(1971, P.A. 806, S. 2.)

Sec. 9-453b. Application. The secretary shall not issue any nominating petition forms unless the person requesting the same makes a written application therefor, which application shall contain the following: (1) The name or names of the candidates to appear on such nominating petition, compared by the town clerk of the town of residence of each candidate with his name as it appears on the last-completed registry list of such town, and verified and corrected by such town clerk or in the case of a newly admitted elector whose name does not appear on the last-completed registry list, the town clerk shall compare his name as it appears on his application for admission and verify and correct it accordingly; (2) a signed statement by each such candidate that he consents to the placing of his name on such petition, and (3) the party designation, if any, which shall consist of not more than three words and not more than twenty letters and which shall not incorporate the name of any major political party. An applicant for petition forms who does not wish to specify a party designation shall so indicate on his application for such forms and his application, if so

marked, shall not be amended in this respect. The secretary of the state shall not issue such forms (1) unless the application for forms in behalf of a candidate for the office of presidential elector is accompanied by the names of the candidates for president and vice-president whom he represents and includes the consent of such candidates for president and vice-president; (2) unless the application for forms in behalf of governor or lieutenant governor is accompanied by the name of the candidate for the other office and includes the consent of both such candidates; and (3) if petition forms have previously been issued on behalf of the same candidate for the same office unless the candidate files a written statement of withdrawal of his previous candidacy with the secretary of the state.

(1971, P.A. 806, S. 3.)

Sec. 9-453c. When single petition may be used. The names of any or all candidates under the same party designation for state offices, as defined by section 9-372, and for the office of presidential elector may be included in one nominating petition, but the name of no candidate for any other office shall be included therein, provided the names of any or all candidates under the same party designation for at-large municipal offices to be filled at a municipal election may be included in one nominating petition.

(1971, P.A. 806, S. 4.)

Sec. 9-453d. Number of signatures. Each petition shall be signed by a number of qualified electors equal to one per cent of the votes cast for the same office or offices at the last-preceding election, or the number of signatures prescribed by section 9-380 with regard to newly-created offices. "Votes cast for the same office at the last-preceding election" means, in the case of multiple openings for the same office, the total number of electors voting at the last-preceding election at which such office appeared on the ballot label.

(1971, P.A. 806, S. 5; P.A. 74-2.)

Sec. 9-453e. Circulator. Each circulator of a nominating petition page shall be an elector of a town in this state and eligible to vote for all candidates listed on such petition. Any individual proposed as a candidate in any nominating petition may serve as circulator of the pages of such nominating petition.

(1971, P.A. 806, S. 6.)

Sec. 9-453f. Signature pages. Before any signatures may be obtained on a petition signatures page, above the space provided for signatures shall be indicated the party designation if any, the name and address of the candidate, the office sought, the election and the date thereof, and the town and district, if such is the case, in which such petition page is to be circulated. Such indication may not be altered or amended after any person has signed the page. Each page of a nominating petition shall contain the names and street addresses of the signers. No page of a nominating petition shall contain the names of electors residing in different municipalities and signatures on any page thereof which has been certified by the clerks of two or more towns shall not be counted by the secretary of the state.

(1971, P.A. 806, S. 7.)

Sec. 9-453g. False signing. Any person who signs a name other than his own

to a nominating petition filed under sections 9-453a to 9-453s, inclusive, or section 9-216 shall be fined not more than one hundred dollars or imprisoned not more than one year or both.

(1971, P.A. 806, S. 8.)

Sec. 9-453h. Withdrawal of signatures. Any signer of a nominating petition may withdraw his signature therefrom at any time up to ten weeks prior to the election by sending a written notice of such withdrawal to the candidate or candidates named in such petition and by sending a copy of such notice to the secretary of the state at least ten weeks prior to such election. Such written notice and the copy thereof shall be sent by registered or certified mail.

(1971, P.A. 806, S. 9.)

Sec. 9-453i. Submission to town clerk. Each page of a nominating petition shall be submitted by the person who circulated the same to the town clerk of the town in which the signers reside at least nine weeks prior to the election.

(1971, P.A. 806, S. 10.)

Sec. 9-453j. Statements by town clerk and circulator. At the time a petition page is submitted to the town clerk of the town in which it is circulated, such page shall contain a statement signed by the town clerk of the town in which the circulator is an elector attesting that the circulator is an elector in the town and setting forth his residence address therein and that he is entitled to vote at the election for the office for which such candidacy is being filed. Any town clerk shall forthwith complete said statement upon request by a circulator prior to the time when the petition page is filed with the town clerk of the town in which it was circulated. Each page of a nominating petition submitted to the town clerk and filed with the secretary of the state under the provisions of sections 9-453a to 9-453s, inclusive, or section 9-216 shall contain a statement as to the authenticity of the signatures thereon, signed under penalties of false statement, by the person who circulated the same, setting forth such circulator's address and the town in which such circulator is an elector and stating that each person whose name appears on such page signed the same in person in the presence of such circulator and that either the circulator knows each such signer or that the signer satisfactorily identified himself to the circulator. Any false statement committed with respect to such statement shall be deemed to have been committed in the town in which the petition was circulated.

(1971, P.A. 806, S. 11.)

Sec. 9-453k. Duties of town clerk. (a) The town clerk shall not accept any page of a nominating petition unless the circulator thereof signs in his presence the statement as to the authenticity of the signatures thereon required by section 9-453j.

(b) The town clerk shall certify on each such page that the circulator thereof signed such statement in his presence and that either he knows the circulator or that the circulator satisfactorily identified himself to the town clerk.

(c) The town clerk shall forthwith give to each circulator submitting a page or pages of a nominating petition a receipt indicating the number of such pages so submitted and the date upon which such pages were submitted.

(d) Such town clerk shall certify on each such page the date upon which it was submitted to him and the number of names of electors on such petition page, which names were on the registry list last-completed or are names of persons admitted as electors since the completion of such list. In the checking of signatures on such nominating petition pages, the town clerk shall reject any name if such name is not the name of an elector as specified above. Such rejection shall be indicated by placing an "R" before the name so rejected. Such clerk may place a check mark before each name appearing on such registry list or each name of a person admitted as an elector since the completion of such list, but shall place no other mark on such page except as provided in this section.

(1971, P.A. 806, S. 12.)

Sec. 9-453l. Delegation of signature check to registrars. Any town clerk may delegate his duty to check the names of signers with names of electors on the registry list pursuant to section 9-453k to the registrars of voters in his town, if the registrars consent, and the registrars shall complete the required certifications with respect thereto on the petition, provided the registrars shall execute a receipt for such pages upon receipt thereof stating the number of pages and provided such checking of names by the registrars shall take place in the office of the town clerk or in the office of the registrars of voters if they have an office. After making the required certifications, the registrars shall deliver the petition pages to the town clerk.

(1971, P.A. 806, S. 13.)

Sec. 9-453m. Signatures, effect of variations. The use of titles, initials or customary abbreviations of given names by the signer of a nominating petition shall not invalidate such signature if the identity of the signer can be readily established by reference to the signature on the petition and the name of a person as it appears on the last-completed registry list at the address indicated or of a person who has been admitted as an elector since the completion of such list.

(1971, P.A. 806, S. 14.)

Sec. 9-453n. Date for filing with secretary. Any town clerk receiving any page of a nominating petition under sections 9-453a to 9-453s, inclusive, or section 9-216 shall complete such certifications as specified herein and shall file each such nominating petition page with the secretary of the state within three weeks after it was so submitted to him.

(1971, P.A. 806, S. 15.)

Sec. 9-453o. Approval of petitions. (a) The secretary of the state may not count for purposes of determining compliance with the number of signatures required by section 9-453d the signatures certified by the town clerk on any petition page filed under sections 9-453a to 9-453s, inclusive, or 9-216 if: (1) The name of the candidate, his address or the party designation, if any, has been omitted from the face of the petition; (2) the page does not contain a statement by the circulator as to the authenticity of the signatures thereon as required by section 9-453j or upon which such statement of the circulator is incomplete in any respect; or (3) the page does not contain the certifications required by sections 9-453a to 9-453s, inclusive, by the town clerk of the town in which the signers reside. The town clerk shall cure any omission on his part by signing

any such page at the office of the secretary of the state and making the necessary amendment or by filing a separate statement in this regard, which amendment shall be dated.

(b) The secretary of the state shall not approve any nominating petition if signatures counted and certified on approved pages are insufficient under section 9-453d.

(c) The secretary of the state may approve a nominating petition received under section 9-453k prior to the tenth week before the election but not earlier than the final date for endorsement by a major party for the office specified in the petition except such approval shall be withdrawn if sufficient signatures are withdrawn under section 9-453h.

(1971, P.A. 806, S. 16.)

Sec. 9-453p. Withdrawal of candidacy. A petitioning candidate may withdraw by filing an affidavit of withdrawal signed and sworn to by said candidate with the secretary of the state and, in the case of a municipal office, by also filing a copy with the town clerk. The secretary of the state shall forthwith notify the appropriate town clerks of such withdrawal in the case of a state or district office.

(1971, P.A. 806, S. 17.)

Sec. 9-453q. Use of party levers for petitioning candidates. The party levers on each voting machine shall be locked and covered so as to prevent straight-ticket voting for petitioning candidates not entitled to a party designation on the ballot label, except that a party lever shall be operative to permit such voting for petitioning candidates entitled to a party designation.

(1971, P.A. 806, S. 21.)

Sec. 9-453r. Ballot labels. A separate row on the ballot shall be used for a petitioning candidate whose name is contained in a petition approved pursuant to section 9-453o, bearing a party designation. A separate row shall be used for the petitioning candidates whose names are contained in petitions approved pursuant to section 9-453o, bearing the same party designation. The order of such party designations shall be as uniform as may be based on the geographical jurisdiction of the offices to be voted upon. On the horizontal lines below the line or lines so used for candidates, if any, who are so entitled to a party designation on the voting machines, shall be placed, in the appropriate office columns, the names of candidates not entitled to a party designation on the voting machine, precedence as to row being given to the candidate whose name appears in the first petition requested provided it shall be properly approved in accordance with section 9-453o. The party lever on each line or lines in which such a candidate's name appears who is not entitled to a party designation shall be covered and the cover labeled "Petitioning Candidates," the print of which shall correspond to that used for party designations on operative party levers.

(1971, P.A. 806, S. 22; 1972, P.A. 27, S. 1.)

Sec. 9-453s. Vacancies in candidacies. Ballot label. Vacancies in candidacies occurring after all nominating petitions have been approved under section 9-453o, shall not cause the position of any candidate's name on the ballot label to be changed to another position unless a blank row on the machine results

from such vacancy or vacancies in which case the position of candidates appearing on lines under the blank row may change if the consent of all candidates involved in such a change is filed in the secretary of the state's office prior to the time for printing and filing sample ballot labels with said secretary. The name of any candidate whose candidacy has been vacated shall not appear on the ballot label. The voting machine pointer over each position where no candidate's name appears shall be locked so that no vote can be cast in that position.

CERTIFICATE OF SERVICE

This is to certify that on the 16th day of September, 1976, copies of the foregoing were mailed, postage prepaid to Daniel Schaefer, Esq., Assistant Attorney General, 30 Trinity Street, Hartford, Connecticut, counsel for Appellee Gloria Schaffer, David Losee, Esq., Conolly, Holtman and Losee, 4 No. Main Street, West Hartford, Connecticut, counsel for Appellee Evelyn Goodwin, and John Armor, Esq., Armor and Marcus, P.A., 425 The Rotunda, 711 W. 40th Street, Baltimore, Maryland, counsel for Eugene McCarthy.

FRANK COCHRAN